

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Galen P. Rufus,)	
)	
Petitioner,)	ORDER
)	
vs.)	
)	
James Sayler, Warden,)	Case No. 1:17-cv-096
)	
Respondent.)	

Petitioner Galen P. Rufus (“Rufus”) is presently in custody at the Missouri River Correctional Center. He initiated the above-entitled action on May 12, 2017, by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 16, 2017, the court issued an order directing: (1) the Clerk’s office to provide respondent with a copy the petition; and (2) respondent to thereafter file an answer or otherwise respond to the petition.

On June 14, 2017, Rufus filed a motion for default judgment. Although not entirely clear, it appears that the motion was predicated upon Rufus’ mistaken belief the court’s aforementioned order imposed a May 16, 2017, deadline for respondent to file an answer or otherwise respond to his petition.

As respondent correctly pointed out in the response to Rufus’ motion, the court’s order contained no such deadline. In any event, under the present circumstances, the court is not inclined to grant Rufus’ motion. A determination on the merits is generally preferable. Moreover, respondent has now entered an appearance and advised that an answer/response is forthcoming. Rufus’ motion (Docket No. 6) is therefore **DENIED**. To avoid any confusion going forward, the court directs respondent to file the answer/response to Rufus’ petition by July 17, 2017. The court

on its own motion shall substitute James Sayler, Warden of the Missouri River Correctional Center, as the named respondent in this action and amend the caption accordingly. See Rule 2(a) of the Rules Governing Section 2254 Cases (“If the petitioner is currently in custody under a state court judgment, the petition must name as respondent the state officer who has custody.”).

IT IS SO ORDERED.

Dated this 20th day of June, 2017.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr., Magistrate Judge
United States District Court